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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

CASE NO.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JOHN C. HUME, PRO SE - PETITIONER

vs.

HAROLD STERLING, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY ASSESSOR OF PROPERTY, AND BOB PATTERSON, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY TRUSTEE, AND WILLIAM N. MORRIS, JR., INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY MAYOR.

- RESPONDENTS

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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APPENDIX

U.S. DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, ET AL, DEFENDANTS

NO. 94-2154 GA

ENTRY DATE 7-21-94

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Before the court is the motion to dismiss filed by defendants--Harold Sterling, individually and in his official capacity as Shelby County Assessor of Property, Bob Patterson, individually and in his official capacity as Shelby County Trustee and William N. Morris, Jr., individually and in his official capacity as Shelby County Mayor. Pro se plaintiff, John C. Hume, brought this action pursuant to 42 U.S.C § 1983. Plaintiff alleges that the

method of property tax assessment in Shelby County, Tennessee is arbitrary and in violation of Article 3, Article 4 and the Tenth, Fourteenth and Fifth Ammendments to the United States Constitution and seeks a refund of taxes paid. Because this court is deprived of subject matter jurisdiction over this matter by the Tax Injunction Act, 28 U.S.C. § 1341, plaintiff's case is dismissed.

The Tax Injunction Act provides that "(t)he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. S 1341. The proscriptions of the Tax Injunction Act extend to suits in federal court to collect a tax refund. See, e.g., Aluminum Co. of America v. Dept. of Treasury, 522 F.2d 1120 (6th Cir. 1975). "This exclusion of federal courts

from the state taxation area is so far reaching it precludes federal courts from declaring state tax laws unconstitutional." Thiokol Corp. v. Dept. of Treasury, 987 F.2d 376, 378 (6th Cir. 1993) (citing Fair Assessment in Real Estate Ass'n v. McNary, 454 U.S. 100, 103 (1981) and Great Lakes Dredge and Dock Co. v. Huffman, 319 U.S. 293 (1943)). Thus, the exclusion encompasses 42 U.S.C. S 1983 damage actions as well. Thiokol Corp., 987 F.2d at 378.

Having established conclusively that plaintiff's section 1983 action implicates the Tax Injunction Act, the court must determine whether Tennessee provides plaintiff with a "plain, speedy and efficient remedy" in the courts of the state. Judicial review of decisions of the Tennessee state board of equalization with re-

gard to property taxes is provided for under T.C.A. S 67-5-1511. That section provides:

(a) The action of the state board of equalization shall be final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes shall be collected upon the assessments determined and fixed by the board.

(b) The judicial review provided in subsection (a) shall consist of a new hearing in chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue. The petition for review may be filed in the chancery court of Davidson County or the county where the disputed assessment was made.

The provision allowing the parties to introduce any new evidence desired was

added to the section in amendments that became effective in 1992. See, e.g., Richardson v. Tennessee Assessment Appeals Comm'n, 828 S.W.2d 403,404 (Tenn. Ct. App. 1991)(discussing previous version of T.C.A. § 67-5-1511, which confined review in chancery court to the administrative record).

In Northwest Airlines, Inc. v. Tennessee State Board of Equalization, 11 F.3rd 70 (6th Cir. 1993), the United States Court of Appeals for the Sixth Circuit held that the Tax Injunction Act did not preclude federal court review of four commercial airlines' suit to enjoin Tennessee's method of taxing air carrier property located in Tennessee. With respect to air carrier property taxation, the review provisions in effect at the time of the Northwest Airlines case provided for review of the Board's decision by the Tennessee Court of Appeals. Id. at 73. In

such cases, however, the Tennessee Court of Appeals' review was limited to the administrative record. Id. This "peculiar fact" led the Sixth Circuit to find a "rare exception to the general rule" that the Tax Injunction Act prohibits federal court adjudication of state tax questions. Id.

In the instant case, judicial review of the administrative record, supplemented by any evidence the parties wish to introduce, is provided for in disputes over state property taxes. The court finds , therefore, that the state has provided a "plain, speedy, and efficient remedy" for plaintiff.

Plaintiff lists a number of cases that he claims establish his right to pursue this case in federal court. Only one of plaintiff's cases is even remotely on point. Nordlinger v. Hahn, ___U.S.___, 112 S.Ct. 2326 (1992), involves a citizen's equal

protection challenge to the California property tax system. Plaintiff apparently cites the case for the proposition that such suits may be brought in federal court. However, the plaintiff in Nordlinger brought her case through the state court system with a final appeal to the United States Supreme Court, which was the first and only federal court to review her claim. Id.

Accordingly, plaintiff's cause of action in federal court is precluded by the Tax Injunction Act and is hereby dismissed.

IT IS SO ORDERED.

Signed JULIA SMITH GIBBONS

U.S. DISTRICT JUDGE

July 19, 1994

DATE

U.S. DISTRICT COURT - WESTERN DISTRICT

OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-GA

ENTRY DATE 8-3-94

JUDGMENT IN A CIVIL CASE

It is so ordered and adjudged that in accordance with the Order Granting Defendants' Motion to Dismiss entered July 21, 1994, this case is hereby dismissed.

APPROVED: Signed JULIA SMITH GIBBONS

U.S. DISTRICT JUDGE

AUG.3, 1994 ROBERT R. DI TROLIO

DATE CLERK

U.S. DISTRICT COURT - WESTERN DISTRICT

OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-HA

ENTRY DATE 11-9-94

ORDER TAXING COSTS

In this cause, defendant filed an itemized cost bill totalling $25.59 for printing fees, and for fees for exemplification and copies of papers necessarily obtained for use in this case.

Notice was given to permit these parties opportunity to be heard concerning the cost bill. Plaintiff appeared to oppose the assessment. Counsel for defendant did not appear in support of the assessment of costs, relying, instead, on the record. As a result of the hearing and matters reflected in the file, costs are taxed

against plaintiff and in favor of defendant as follows:

Printing fees	16.50
Exemplification and copy fees	$ 9.00
TOTAL	$25.50

Pursuant to Rule 54(d), the action of the clerk may be reviewed by the court upon motion, served within 5 days of the docketing of this order.

Signed ROBERT R. DI TROLIO

CLERK

U.S. DISTRICT COURT - WESTERN DISTRICT

OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-HA

ENTRY DATE 11-14-94

ORDER OF REFERENCE

It is hereby ORDERED the above styled case be referred to the United States Magistrate for report and recommendation on the Motion for Attorney's fees in accordance with 28 U.S.C. §636(b) (1) (B).

Any exceptions or objections to the Magistrate's report and recommendation or determination shall be made by motion within ten (10) days of the report and shall set forth with particularity those portions excepted to and the reasons for the exceptions. A failure to timely object shall be deemed a waiver to objections, exceptions and further appeal.

It is so ORDERED this the 14 day of November, 1994.

Signed ODELL HORTON, JUDGE

U.S. DISTRICT COURT

U.S. COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-6103

ENTRY DATE 3-14-95

ORDER

BEFORE: KENNEDY, KRUPANSKY AND NORRIS, CIRCUIT JUDGES.

John C. Hume, a pro se Tennessee resident, appeals a district court judgment dismissing his civil rights action filed pursuant to 42 U.S.C. §§ 1983 and 1985. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P.34(a). Seeking monetary relief, Hume sued multiple officials of Shelby County, Tenn-

essee, contending that the method used to assess the residential property in Shelby County was illegal and arbitrary. The county officials were sued in their individual and official capacities. The district court dismissed the complaint for lack of jurisdiction.

In his timely appeal, Hume essentially argues that the district court erred by ignoring the United States Supreme Court's decision of Nordlinger v. Hahn, 112 S. Ct. 2326(1992).

The dismissal of a complaint pursuant to Fed. R. Civ. P. 12(b)(1) is reviewed de novo. Ynclan v. Department of Air Force, 943 F.2d 1388, 1390 (5th Cir. 1991).

The Tax Injunction Act, 28 U.S.C. § 1341, precludes Hume from receiving the relief he seeks. The Tax Injunction Act provides, in part, that a district court cannot enjoin, suspend, or restrain the assessment, levy, or collection of any tax

under state law where a speedy and effecient remedy exists in the courts of that state. Id. The Act is to prevent federal intervention with the important local concern of tax collection, see California v. Grace Brethren Church, 457 U.S. 393, 408-11 (1982): In re Gillis, 836 F.2d 1001, 1004 n.2 (6th Cir. 1988). and even precludes federal courts from declaring state tax laws unconstitutional. Thiokol Corp. v. Department of Treasury, 987 F.2d 376,378 (6th Cir. 1993). The Act is also applicable to S 1983 actions challenging the validity of state tax systems. Fair Assessment in Real Estate Ass'n v. McNary, 454 U.S. 100, 116 (1981). Under Tenn. Code Ann. § 67-5-1511, Hume may appeal the decision of Tennessee's Board of Equalization to the state courts of Tennessee. Judicial review of the Board's decision must consist of a new hearing based on the administrative record

and any additional evidence the parties may submit. Thus, Hume has a speedy and efficient remedy in the state courts of Tennessee to challenge his property assessment.

Hume contends that the district court ignored the Supreme Court's decision of Nordlinger v. Hahn, 112 S. Ct. 2326 (1992). However, Nordlinger is not applicable to this case as Nordlinger involved a question of whether California's property tax scheme violated the Equal Protection Clause. Id. at 2331-35. Here Hume simply objects to the assessed value of his property. Further, unlike Nordlinger, Hume did not raise his objections through the state court system prior to seeking federal intervention.

Finally, Hume has not stated a claim under 42 U.S.C. § 1985. See Griffin v. Brecken-

ridge, 403 U.S. 88, 102-03 (1971); Seguin v. City of Sterling Heights, 968 F.2d 584, 590 (6th Cir. 1992).

Accordingly, we affirm the district court's judgment. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed LEONARD GREEN

CLERK

U.S. DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-GA

ENTRY DATE 3-24-95

REPORT AND RECOMMENDATION

Before the court is the motion by defendants for an award of reasonable attorney's fees against plaintiff, pursuant to 42 U.S.C. §1988. This matter has been referred to the United States Magistrate Judge for report and recommendation.

Plaintiff John C. Hume, who is an owner of two (2) parcels of real estate in Memphis, Shelby County, Tennessee, has brought a pro se action under 42 U.S.C. S1983 against Harold Sterling, the duly elected Assessor of real estate in Shelby County; Bob Patterson, the duly elected Shelby County Trustee (who receives payment of

real estate taxes in Shelby County); and William N. Morris, Jr., the then duly elected Mayor of Shelby County. In this action, plaintiff sought an order directing defendants to refund a portion of real estate taxes that plaintiff paid, under protest, on his two (2) parcels of real estate. Plaintiff asserted that the method of assessing residential real estate in Shelby County was illegal and arbitrary, violating certain of plaintiff's rights under the United States Constitution.

Defendants filed a motion to dismiss, asserting that this court had no subject matter jurisdiction of plaintiff's complaint because of the Tax Injunction Act (28 U.S.C. §1341). The district judge agreed with the defendant's position, and dismissed plaintiff's complaint. On March 10, 1995, the United States Court of

Appeals for the Sixth Circuit affirmed the decision of the district judge.

Defendants have now asked this court to award the amount of their reasonable attorney's fees in this cause against plaintiff under 42 U.S.C. §1988.

Under the provisions of 42 U.S.C. S1988(b) this court may, in its discretion, in an action under 42 U.S.C. §1983, "allow the prevailing party .. a reasonable attorney's fee as part of the costs".

While it would seem, from a purely textual analysis of §1988(b), that the rule would apply equally, whether the "prevailing party" were a plaintiff or a defendant, such is not the case. A prevailing plaintiff is more likely to obtain an award of attorney's fees under §1988(b) than a prevailing defendant.

A prevailing defendant may recover attorney's fees from the plaintiff under §1988 only if the court finds that the

plaintiff's action was "frivolous, unreasonable or without foundation, even though not brought in subjective bad faith". Hughes vs. Rowe, 449 U.S. 5, 14 (1980) (following Christiansburg Garment Co. vs. E. E. O. C., 434 U.S. 412,421 (1978), and applying its standard to §1983 cases). In order for defendant to recover attorney's fees from plaintiff under this standard, plaintiff's action must be "meritless, in the sense that it is groundless or without foundation". Hughes at p. 14.

Under this standard, it is submitted that plaintiff's complaint herein was "meritless", "groundless", and "without foundation". Both the district judge and the Court of Appeals for the Sixth Circuit ruled that the Tax Injunction Act (28 U.S.C. §1341) precluded plaintiff from receiving the relief sought, and that plaintiff had a speedy and efficient

remedy in the courts of Tennessee to challenge his property assessment. Further, both courts concluded that plaintiff's reliance upon Nordlinger vs. Hahn, U.S., 112 S. Ct. 2326 (1992) was clearly inappropriate.

It is submitted that, since plaintiff's complaint was meritless, groundless, and without foundation, defendants' reasonable attorney's fees should be assessed against plaintiff.

Defendants' counsel has filed materials indicating that he spent a total of 53.6 hours (41.8, 5.7, 5.9, and .2 hours) in handling this case to this point. He has indicated that, for most of these hours, he charged $55.00 an hour. Later, the hourly rate increased to $90.00 an hour, and recently his hourly rate increased to $125.00 an hour. The total attorney's fee claimed is $3,644.00.

It is submitted that the hours spent, and the hourly rate charged, are reasonable, and that plaintiff should be ordered to pay to counsel for defendants the sum of $3,644.00, representing defendants' reasonable attorney's fees.

Further, defendants have asserted that they incurred copying fees of $1.35, and it is submitted that this is a reasonable charge, and plaintiff should pay it.

Under these circumstances, it is therefore RECOMMENDED that plaintiff should pay to counsel for defendants the total sum of $3,645.35 within ninety (90) days of the docketing of the order of this court approving the within report and recommendation.

All parties are advised that all objections to this report and recommmendation must be filed within ten (10) days or such objections may be deemed waived by the District Court.

Additionally, such a failure to file within ten (10) days may be treated as a waiver of the right to appeal the District Court's order hereon. U.S. vs. Walters, 639 F. 2d. 927 (6th Cir. 1981);Patterson v. Mintzes,717F. 2d. 284 (6th Cir. 1983); Thomas vs. Arn, 474 U.S. 140(1985); see also FED. R. CIV. P. 72(b).

22 March 1995 JAMES H. ALLEN, U.S.MAG.JDG.

U. S. COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN C. HUME, PLAINTIFF - APPELLANT

v.

HAROLD STERLING, et al, DEFENDANTS -

APPELLEES

NO. 94-6103

ENTRY DATE 4-12-95

MANDATE

Pursuant to the court's disposition that was filed 3/10/95 the mandate for this case hereby issues today.

A True Copy.

COSTS: NONE Attest:

Filing Fee....$ Signed Patricia Elder

Printing .....$ Deputy Clerk

Total.....$

U.S. DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

v.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-H

ENTRY DATE 4-28-95

ORDER ACCEPTING REPORT AND RECOMMENDATION

Defendants in this case have requested attorney's fees from Plaintiff pursuant to 42 U.S.C. § 1988. Under provisions of that statute, a court may in its discretion, in an action under 42 U.S.C. §1983. Magistrate Judge James Allen entered a ruling on March 24, 1995 recommending that attorney's fees be granted to Defendants. Pro se Plaintiff, John Hume has filed a timely objection to the Magistrates report and recommendation.

Background

Plaintiff brought a pro se action under 42 U.S.C. § 1983 and claiming that Shelby

County's method of residential property tax assessment is illegal and arbitrary and that it violates certain of plaintiff's rights under the United States Constitution.

Defendants filed a motion to dismiss, arguing that this court had no subject matter jurisdiction of Plaintiff's complaint because of the Tax Injunction Act, 28 U.S.C. § 1341.

The district court agreed with the defendant's position and dismissed Plaintiff's complaint. The district court decision was affirmed by the Sixth Circuit Court of Appeals.

Defendants filed for an award of attorney's fees under 42 U.S.C. § 1988, stating that they are entitled to an award because they are the prevailing parties in an action to enforce § 1983 and because the action was frivolous, unreasonable and without foundation.

Magistrate's Report

The Magistrate found that Plaintiff's complaint was "meritless, groundless and without foundation". The Magistrate stated that "both the district judge and the Court of Appeals for the Sixth Circuit ruled that the Tax Injunction Act (28 U.S.C. S 1341) precluded plaintiff from receiving the relief sought, and that plaintiff had a speedy and efficient remedy in the courts of Tennessee to challenge his property assessment." In addition, the Magistrate noted that both courts concluded that plaintiff's reliance upon Nordlinger v. Hahn, 112 S. ct. 2326 (1992) was clearly inappropriate. The Magistrate then concluded that reasonable attorney's fees should be assessed against plaintiff. The defendant was awarded $3,645.35 for attorney's fees and costs. Plaintiff Hume filed an objection to the Magistrate's report and recommendation.

In his objection, Hume restated his argument that Nordlinger should be applied to his case. In addition, Hume stated that the district court was in error when it dismissed his complaint. Hume did not offer any reasons why attorney's fees should not be granted in this case.

Upon de novo review of the issues in this case, the Court finds the report is not clearly erroneous or contrary to law and as such should be adopted at this time. See Flournoy v. Marshall, 842 F.2d 875 (6th Cir. 1985). Accordingly, the court hereby ADOPTS the Magistrate's report and recommendation granting attorney's fees to the defendant in the sum of $3,645.35. This decision closes the case in this Court.

It is so Ordered this 27 day of April, 1995.

Signed ODELL HORTON, JUDGE

U.S. DISTRICT COURT